1774. *August* 10.

CHARLES BOYD, Esq; *against* General JAMES ABERCROMBY of Glassoch.

No 79.
An objection to a decree of division, that no notice was taken of a grassum paid at the commencement of a tack, was repelled.

MR BOYD had got a freehold qualification from the Duke of Gordon, in the county of Elgin, consisting of the liferent of a superiority of certain parts of the barony of Gairtly, lying in the said county; and his Grace had given a similar qualification, upon other parts of the said barony, to Sir Alexander Gordon and William Boyd, Esq. And, as the whole barony of Gairtly stood valued *in cumulo*, hence a decree of division was obtained, upon an application by his Grace to the Commissioners of Supply.

The Messrs Boyds, among others, claimed to be enrolled at last Michaelmas; but the freeholders having been of opinion, that the decree of division was null, they rejected their claims, whereupon the claimants complained to this Court.

The general objections to the decree of division being over-ruled, special objections to the validity of the division, so far as respects the *cumulo* belonging to the barony of Gairtly, were likewise urged; one, in particular, as applicable to Mr Charles Boyd's qualification, and arising from a discovery that had been newly made, upon inspection of one of the writs produced in this Court by the complainers themselves, to answer a different purpose, namely, a minute of tack, dated 30th May 1765, granted by William Gordon, as factor for the Duke, to George Gordon in Mains of Gairtly, of the Mains of Gairtly and lands of Hawkhill, for nineteen years from Whitsunday 1765, for which possession he becomes bound to pay to the Duke, yearly, the sum of L. 27 : 2 : 1 4-12ths Sterling, and 11 bolls oat-meal. 'As also, the said George Gordon and his foresaids are to pay to the Duke of Gordon, or his factor, at the term of Whitsunday 1766, the sum of L. 100 Sterling of grassum, in consideration of the foresaid lease, and immediately to grant bill payable for the said sum, in these terms.'

Objected; It appears, from the decree of division, that no notice was taken of this large grassum, which stands incontestibly proved to have been paid for the tack at its commencement, over and above the yearly rent thereby stipulated; but only a proof brought of the yearly rent payable by the tack, without any addition being made thereto on account of the grassum; whereas this grassum fell to be proportioned upon the whole years of the tack, being in reality a part of the rent or value paid by the tenant for the possession, as much as what he was bound to pay yearly thereafter; and, consequently, that the division made without regard to it, is most unjust and erroneous.

Answered, in the *first* place; If this is a good objection, the tendency of it behoved to be not to increase, but to diminish the complainer's valuation. But,

2*dly*, There is no foundation for the observation.

No 79. It would, on the contrary, be extremely irregular and unwarranted, to hunt after every gratuity or grassum which had been paid by a tenant. If, indeed, it appeared that the old rent had been lowered in consideration of a grassum, or that the grassum was extremely exorbitant, compared with the permanent rent, there might be some shadow for an objection of this kind; but, here, the whole is a grassum of L. 100 for a nineteen years tack, with a rent of about L. 32 Sterling. In such a case, it would have been very exceptionable, if the Commissioners had paid any regard to any thing except the real permanent rent payable by the tenant. In the cases from the county of Forfar, there was some argument upon this point in the division of Lord Panmure's valuation; but the Court paid no regard to the objection, although much stronger in that than in this case. And, indeed, unless there is something very extraordinary in the nature of the grassum, compared with the rent, it would be productive of very great uncertainty and confusion, if the Court were to pay regard to such casual circumstances.

THE COURT "repelled this, as well as all the other objections to the decree of division, and ordered the complainers to be put upon the roll."

Act. *Solicitor Dundas.* Alt. *Rae.*

Fac. Col. No 135. *p.* 358.

No 80. 1780. *July* 25. FERGUSON *against* SHAW STEWART.

AN erroneous division of a *cumulo* valuation having been acquiesced in for 20 years, and the land-tax paid according to it, the LORDS dismissed a complaint against an enrolment made on the ground of that error.—See APPENDIX.

Fol. Dic. v. 3. *p.* 309.

1780. *December* 6. MONTGOMERY-CUNNINGHAM *against* HAMILTON.

No 81. IN the division of a valuation, all parties who have interest ought either to concur, or to be called as parties. But this rule is not enforced with rigour. The Court will not sustain the simple objection made by a freeholder or commissioner, that he has not been called as a party, unless he can likewise show that the division is materially wrong; for, unless a division be faulty, no person can properly be said to have any interest in challenging it. See APPENDIX.

Fol. Dic. v. 3. *p.* 409.